

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

A. M.,

Claimant,

vs.

VALLEY MOUNTAIN REGIONAL
CENTER,

Service Agency.

Case No. 2006010948

DECISION

Ralph J. Venturino, Administrative Law Judge for the Office of Administrative Hearings, State of California, heard this matter on April 4, 2006, in Stockton, California.

Claimant was not present at the hearing and was represented by one of his authorized representatives, his father, Fikret.

Anthony Hill, Assistant Director of Case Management, represented the service agency, Valley Mountain Regional Center (VMRC).

Evidence was received and the matter was submitted for decision on April 4, 2006.

ISSUES

ISSUE 1

Did VMRC appropriately deny claimant's request for a van lift and related items?

ISSUE 2

Is VMRC required to pay for van modifications that are prerequisites to the approved services? In this case, is VMRC responsible to pay for the interior finishing of the van?

FINDINGS OF FACT

1. Claimant is a consumer with cerebral palsy who will be eighteen years old on August 19, 2006. He is a high school senior, lives with his family, and plans to attend a local community college. He uses a manual wheelchair but will very likely need a power wheelchair to attend college. He also hopes to learn how to drive the 2005 full size GMC Savannah van his family recently purchased.

2. In September 2005, VMRC assessed claimant's needs in an Individual Program Plan (IPP). The IPP contained a "Non-Ambulatory/Explore Equipment" objective.¹ This objective identified, among other things, the need for a van wheelchair lift for claimant's wheelchair.

3. To effectuate the van wheelchair lift objective, VMRC sought an evaluation from LifeWorks Applied Clinical Solutions of Stockton, California (LifeWorks). After visiting with claimant and his family (on or about September 29, 2005), and completing its evaluation (on or about November 2, 2005), LifeWorks recommended a power wheelchair lift with a raised roof and door kit for the 2005 GMC Savannah van.

Following its recommendation, Lifeworks apparently sent the evaluation report to two vehicle modification vendors, Elite Mobility, Inc. of Modesto, California (Elite), and Driving Specialties of Sacramento (American River Mobility, Inc.) of Rancho Cordova, California (Driving Specialties).

4. On December 1, 2005, VMRC issued a "Notice of Proposed Action" (NPA) to claimant and his parents (claimant's authorized representatives). The NPA "Denied Van (sic) modifications" because "The Regional Center has assessed consumer's needs and has identifies (sic) options that are more cost effective and can meet the consumer's needs. The Regional Center is required to consider services that are effective and the most cost effective option. This requirement ensures that the Regional Center's resources are deployed at an optimal level."²

5. In January 2006, claimant filed a request for fair hearing.

Facts Relating to Van Modifications

6. On or about November 2, 2005, Driving Specialties submitted an "Estimate for Repairs/Conversion" to VMNC that totaled \$18,615.00. This estimate was done without inspecting the vehicle and without evaluating the claimant. The estimate included a wheelchair lift, a raised roof, door kit for a raised roof, and an "Ez-Lock System."

¹ Objective #8, page 5.

² At the April 4, 2006 hearing, VMRC argued that it had the right to choose a less expensive vendor for van modifications and that the claimant was responsible to cover exposed wiring before the proposed van modifications could be undertaken. Whether or not any van modifications would be done was not in contention.

7. On or about March 7, 2006, Elite submitted an “Estimate” to VMNC that totaled \$6,897.00. This estimate was done shortly after inspecting the vehicle and evaluating the claimant. The estimate included a wheelchair lift, a normal door modification kit, and a “Tie Down” system instead of an “Ez-Lock” system. The estimate noted that it did not include a raised roof or a door kit for a raised roof. The estimate also noted that Elite “[w]ill forward additional estimate to include those items.”³

8. Mr. Michael Harvey, a representative from Elite who has five years experience with Elite and is trained on van wheelchair lifts, credibly testified that a company can give a more accurate estimate after inspecting a vehicle. In this case, Elite’s inspection saw an unfinished interior with uncovered wiring in the van.⁴ Elite has liability and functionality concerns relating to the uncovered wiring and would not move forward with any VMRC approved modifications unless the uncovered wiring is addressed.

Mr. Harvey did not produce a further written estimate for a raised roof, and door kit for a raised roof, but did state the additional cost would be approximately \$5,000 to \$6,000. He also stated that the method used to cover the wires, such as wood panels, could affect the work required for the lift modifications and the total estimate.

Mr. Harvey also compared the Elite and Driving Specialties estimates. He explained that the “Ez-Lock” system in the Driving Specialties estimate is more costly and used primarily for drivers who are wheelchair users.⁵ Mr. Harvey also explained that Elite’s “Tie Down” system is appropriate for manual or electric wheelchairs. In addition, Mr. Harvey noticed that the Driving Specialties estimate did not include the addition of seats, seat belts, or shoulder harnesses.⁶ He also indicated that the Driving Specialties estimate did not include covering the exposed wiring. Finally, Mr. Harvey said that he might be able to help claimant find someone to do the work to cover the exposed wiring.

³ Apparently, VMRC only showed Elite’s March 7, 2006 estimate to claimant at a meeting prior to the fair hearing. VMRC forwarded the November 2, 2005, Driving Specialties estimate to claimant in time for the fair hearing but claimant’s father expressed concerns about not seeing both estimates at the prior meeting.

⁴ The wiring is “uncovered” because the van is usually sold for commercial use and the inside is not “finished.” It is not that there are individual wires lacking insulation.

⁵ LifeWorks evaluation of claimant, and VMRC’s service request approval, is based upon claimant being a passenger while in his wheelchair.

⁶ Claimant’s father expressed an interest in having additional modifications that would allow him to drive claimant (claimant’s father is also a wheelchair user) and allow additional family members to travel along.

Facts Relating to Claimant's Van Wheelchair Lift Needs Assessment

9. Objective #8 in claimant's IPP allows for van modifications to meet claimant's needs. The Driving Specialties and Elite van modifications meet claimant's needs as identified in his IPP.⁷

10. Since claimant's request was in excess of \$5,000, the Purchase of Service (POS) Exceptions Committee reviewed the request.⁸ After review, VMRC agreed to provide a standard lift for the van.

Based upon Mr. Harvey's testimony updating Elite's estimate, VMRC will accept Elite as the van modification vendor since it meets the claimant's needs, including safe entry and exit, and it is the lesser of the two estimates. VMRC's approval of Elite's modifications is contingent upon Elite accepting the van after the exposed wiring is covered. Mr. Paul Billodeau, VMRC's Director of Case Management, offered VMRC's position that it is not responsible for work to finish the interior of the van (to cover the wiring) or any modification items relating solely to family members. He also offered that if any work a vendor does is not done incorrectly, VMRC will make sure any problems are fixed.

11. Ms. Mary Sheehan, R.N., the VMRC Occupational Therapy Supervisor for durable medical equipment to consumers expressed concern that the Driving Specialties estimate was done without a van inspection and that it may lack items while also including unnecessary items. After further evaluation, VMRC realized that the family van should be modified to accommodate claimant and those modifications should include a raised roof and a door kit for a raised roof. She also buttressed Mr. Billodeau's testimony concerning VMRC's position that it is not responsible for work to finish the interior of the van or any modification items relating solely to family members.

Claimant's Concerns

12. Claimant's father's primary concern was about his son's safety. He appeared anxious over VMRC using a vendor with an estimate that was, up until the April 4 hearing, less than half of the competing estimate. He believed that it would be easier if the vendor included the work to cover the wiring along with the VMRC-approved van modifications. He also asserted that any additional modifications his son requested were to help him drive his son, if necessary. Claimant's father believed that the additional items would help keep the family together.

⁷ Ms. Deborah Sneed, VMRC's Service Coordinator, discussed the option of purchasing a used van that has a lift already installed. Although this issue was discussed during VMRC's opening statement and claimant's father introduced evidence concerning approximate prices for such vans, this appeal only concerned VMRC's denial of van modifications.

⁸ VMRC's Administrative Procedures Manual, AP 400-99-10, "To Obtain Needed Equipment/Home Modifications/Van Modifications for a Consumer," #11, p.3.

LEGAL CONCLUSIONS

Applicable Law and Jurisdiction

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act), governs this case.⁹ The Lanterman Act provides for an administrative “fair hearing” appeal of a proposed service agency decision to determine the rights and obligations of a consumer and the involved service agency.¹⁰ Claimant timely requested a fair hearing to appeal VMRC’s December 2005 denial of unspecified van modifications. Jurisdiction was therefore established.

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of their “treatment and habilitation services and supports” in order to enable such persons to live in the least restrictive environment possible.¹¹

Burden and Standard of Proof

3. The Lanterman Act does not assign the burden of proof to either party. Its fair hearing procedures merely provide that, absent an agreement or good cause, the service agency shall present its witnesses and evidence first, but that this requirement “does not alter the burden of proof.”¹² No appellate court has decided this issue regarding the Lanterman Act; however, appellate courts have dealt with similar issues in other contexts. Where an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on her.¹³ Most recently, the United States Supreme Court held that the burden of proof in an administrative hearing challenging an individualized education program under the Individuals with Disabilities in Education Act, 20 U.S.C. 1400 et seq., is on party seeking relief.¹⁴

As no other statute or law specifically applies to the Lanterman Act, the degree of proof in this case is preponderance of the evidence.¹⁵

⁹ Welfare and Institutions Code section 4500 et seq. Unless otherwise specified, all further statutory references are to the Welfare and Institutions Code.

¹⁰ Sections 4700 through 4716.

¹¹ Sections 4501 and 4502, subdivision (a).

¹² Section 4712, subdivision (j).

¹³ *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greator v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits].

¹⁴ *Schaffer v. Weast* (Nov. 14, 2005) 126 S. Ct. 528, 2005 U.S. Lexis 8554.

¹⁵ Evidence Code section 115.

In this matter, claimant has the burden of proof, by a preponderance of the evidence, as to each issue raised.

Claimant's IPP

4. The Department of Developmental Services (DDS) is the state agency charged with implementing the Lanterman Act. The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime.¹⁶ To determine how an individual client is to be served, regional centers are directed to conduct a planning process that results in an individual program plan, or IPP, that is designed to promote as normal a life as possible.¹⁷ The IPP is developed by an interdisciplinary team and must include participation by the client and/or his or her representative. The IPP must, among other things, set forth goals and objectives for the client, contain provisions for the acquisition of services, and reflect the client's particular desires and preferences.¹⁸

The determination of services and supports to include in the IPP shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goal stated in the individual program plan, and the cost-effectiveness of each option.¹⁹ A regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP.²⁰

Claimant's IPP identifies claimant's family's need to modify their family van for a wheelchair lift for claimant's current regular wheelchair. The issues in this matter are which vendor may undertake the modification work and what items are included in the modification for which VMRC is responsible.

¹⁶ Section 4620.

¹⁷ Section 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.

¹⁸ Sections 4646, 4646.5, subdivision (a)(1), (2) and (4), 4512, subdivision (b), and 4648, subdivision (a)(6)(E).

¹⁹ Section 4512, subdivision (b).

²⁰ Section 4648, subdivision (a)(1).

ISSUE 1

Did VMRC appropriately deny claimant's request for a van lift and related items?

5. Section 4646, subdivision (a), provides as follows:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and *reflect the cost-effective use of public resources*. (Emphasis added.)

When selecting a provider of consumer services and supports, the regional center shall consider, "the cost of providing services or supports of comparable quality by different providers, if available."²¹

In addition, VMRC's mandate to provide the services to facilitate implementation of the IPP in a cost-effective manner is also discussed in section 4640.7, subdivision (b). Section 4640.7 states:

(a) It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.

(b) Each regional center design shall reflect the maximum cost-effectiveness possible and shall be based on a service coordination model, in which each consumer shall have a designated service coordinator who is responsible for providing or ensuring that needed services and supports are available to the consumer. Regional centers shall examine the differing levels of coordination services needed by consumers and families in order to establish varying caseload ratios within the regional center which will best meet those needs of their consumers.

²¹ Section 4648, subdivision (a)(6)(D).

Also instructive is section 4512, subdivision (b), which states in relevant part:

Services and supports for persons with developmental disabilities' means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. *The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.* (Emphasis added.)

Section 4512 gives equal weight to the preferences of the consumer (or the consumer's family), the effectiveness of the option in meeting the goals, and to the cost-effectiveness of each option.

Although the preference of the claimant was that additional modification items were included in the family's van so his father could drive, there was a lack of objective evidence that these items were needed to meet the goals in claimant's IPP. In addition, the additional items would normally be needed for claimant's father independent of claimant's needs.

6. Claimant has not met his burden of demonstrating that VMRC's decision concerning the modification of claimant's family's van was not the most cost effective means to meet the claimant's needs discussed in his Individual Program Plan. VMRC's decision to choose Elite's estimate over Driving Specialties' estimate is sound based upon Factual Findings 1, 2, 3, and 6 through 12, and Legal Conclusions 1 through 5.

ISSUE 2

Is VMRC required to pay for van modifications that are prerequisites to the approved services? In this case, is VMRC responsible to pay for the interior finishing of the van?

7. As found in Legal Conclusion 6, VMRC's choice of estimate for claimant's family's van modifications is sound and meets claimant's needs without any other items.

8. Claimant has not met his burden of demonstrating that VMRC's responsibility for the requested modifications extends beyond the claimant's needs as outlined in his IPP. VMRC's responsibility does not include the prerequisite of finishing the van interior to cover wires unrelated to the approved services.

ORDER

1. As found in Legal Conclusions 6 and 8, claimant's request for specific van modifications not approved by VMRC is DENIED.
2. VMRC shall continue to coordinate the approved van modifications for claimant; and
3. VMRC shall facilitate VMRC's chosen vendor's assistance to help claimant's family cover wires so the approved modifications can take place.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days of receiving notice of the final decision in accord with Welfare and Institutions Code section 4712.5, subdivision (a).

DATED: April 17, 2006

RALPH J. VENTURINO
Administrative Law Judge
Office of Administrative Hearings